

Internal Revenue Service

District
Director

Department of the Treasury

1100 Commerce St., Dallas, Texas 75242

Date: MAR 25 1981

Employer ID Number:

Person to Contact:

Telephone Number:

Refer Reply To:

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under Section 501(c)(3) of the Internal Revenue Code.

The information submitted discloses that you were incorporated on [redacted] The purpose of your organization as stated in your Articles of Incorporation is to raise money for AIDS treatment and any other purpose consistent with Act.

Your primary activity is the manufacturing of food. The initial product line will be [redacted]. This product will be distributed in local retail grocery stores.

Your source of financial support will be the proceeds from the sale of [redacted] and other food products.

Your bylaws state the corporation shall have three directors who shall be known as the Board of Directors. The activities and affairs of the corporation shall be conducted by or under the direction of the Board of Directors.

When asked if the food manufactured by your organization is sold to the public at cost or at a substantially lower price than charged by others, you stated that [redacted] is sold at a comparable price to other locally manufactured [redacted]. The retail price of [redacted] is determined solely by the grocery stores. The only prices that you can effectively regulate are the wholesale and distributor prices which are considerably lower than your competition. You also stated that your company is not offering food products at a reduced cost. Your objective is to sell as much [redacted] as you can at fair market price, cover your operating expenses with money received from distributors and donate remaining money (the profits) to worthwhile 501(c)(3) charities.

[redacted] is staffed by employees with varying levels of experience in the retail food industry. Compensated employees are used as Executive Director, consultant, delivery personnel, and demonstrators. Volunteer labor has been limited to stamping expiration dates on labels and aligning label stickers on bottles.

Section 501(c) of the Code describes certain organizations exempt from Federal income tax under section 501(a) and reads, in part, as follows:

"(3) Corporations, *** fund, or foundation, organized and operated exclusively for religious, charitable, scientific, *** literary, or educational purposes, *** no part of the net earnings of which inures to the benefit of any private shareholder or individual ***

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a)(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(a)(2) The term "exempt purpose or purposes," as used in this section, means any purpose or purposes specified in section 501(c)(3) *** "

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(c)(2) Distribution of earnings. An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals."

"(d)(2) Charitable defined. The term "charitable" is used in section 501(c)(3) in its generally accepted legal sense *** Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes ***

Section 502 of the Code provides that:

"(a) An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt under Section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under Section 501."

"(b) Special Rule. - For purposes of this section, the term "trade or business" shall not include:

(2) any trade or business in which substantially all the work in carrying on such trade or business is performed for the organization without compensation ***

[REDACTED]

Your organization is carrying on a trade or business for profit within the meaning of Section 502. Your purpose of manufacturing food, namely the [REDACTED], to be sold at market value is an indication that your organization is not engaged exclusively in furtherance of a charitable purpose. You are engaged in an activity that is the same as a profit making business. The organization's method of operating is to sell its product at a price comparable to other locally manufactured [REDACTED], cover the operating expenses with the money received from distributors and donate the remaining money to charities. The manufacturing of a food product that is sold at market value cannot be construed as a charitable activity that is recognized under Section 501(c)(3) of the Code.

Your manner of operation shows that you are operating like a for-profit organization. Your employees are salaried, and the salary will be increased as profit is increased. You have only an insignificant amount of volunteer labor. Therefore you have not met the exception to a trade or business of Section 502(b)(2) that substantially all the work is performed by volunteers.

You have no significant charitable activity as required by section 501(c)(3) of the Code. Your contributions to [REDACTED] have been minimal in your first years of operation, and your financial data shows your primary purpose to be the operation of a for profit business.

Accordingly, we have concluded that you are not entitled to recognition of exemption from Federal Income Tax under Section 501(c)(3) of the Code

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Code as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that [REDACTED] organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

Ellen Murphy

Ellen Murphy
Acting District Director

Enclosures:
Publication 392
Form 6016

Department of the Treasury Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Prepare In
Duplicate

Case Number	Date of Latest Determination Letter
Employer Identification Number	Date of Proposed Adverse Action Letter
Name and Address of Organization	

I consent to the proposed adverse action relative to the above organization as shown by the box(es) checked below. I understand that if Section 7428, Declaratory Judgments Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

- ☒ Denial of exemption
- ☐ Revocation of exemption, effective
- ☐ Modification of exempt status from section 501(c)() to 501(c)(), effective
- ☐ Classification as a private foundation (section 509(a)), effective
- ☐ Classification as a non-operating foundation (section 4942(j)(3)), effective
- ☐ Classification as an organization described in section 509(a)(), effective
- ☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgment under section 7428.

(Signature instructions are on the back of this form.)

Name of Organization	
Signature and Title	Date
Signature and Title	Date